

John MacPherson Berrien to Andrew Jackson, November 27, 1829, from Correspondence of Andrew Jackson. Edited by John Spencer Bassett.

ATTORNEY GENERAL BERRIEN TO JACKSON.

Washington, November 27, 1829.

The Attorney General presents his respects to the President of the United States, and Conforming to his request, has the honor to submit to his consideration the following suggestions.

The subject matter of the reference made to the Attorney General, includes two enquiries — *one* , which relates to the principles both of *constitutional law* , and of *finance* , connected with the *existing institution* , and *that which the message proposes to substitute for it* —and a *second* , which questions the *expediency* of making the proposed communication to Congress at this time.

The question of constitutional law which belongs to the first enquiry, relates to the power of the Federal Government, to establish a corporation for banking purposes, and to the right of the Legislature to grant exclusive privileges. It is not to be denied that this question has heretofore occasioned much diversity of opinion, and it is not doubted that this diversity still exists, although probably in a more limited degree. At the same time it must be admitted, that the existence of the power, has at various times, and in different forms, been affirmed by every department of the Government. If this power is not granted by the Constitution, it is very certain, that no series of usurpations can give it a legitimate existence in that instrument. Since however an ins[ti]tution now exists, which results from the exercise of that power, it seems to me that the question of constitutional power may

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be wisely left to rest on the footing on which anterior decisions have placed it, so far as the Executive department is concerned, until that department shall be called to do some act, which will necessarily raise this question. If this view of the subject should not accord with the determinations of the President, the attorney General will cheerfully submit his opinion on the question of constitutional power, whenever it shall be desired

In the mean time I am bound to state respectfully to the President, my opinion that it is not expedient at this time, to make the proposed communication to Congress. If this would be considered as falling within the scope of Executive *duty* , the question of *expediency* would not arise. What the *former* enjoins, could of course not be yielded to considerations springing from the *latter* . The Attorney General does not believe that any such obligation exists.

The charter of the present institution will not expire until 1836 . It is not proposed that the expression of the views of the President on this occasion, should interfere with that institution, except as they may affect the question of the renewal of the charter. Now it cannot be foreseen, as far as the Attorney General is advised, that the Executive and Legislature will be called to act upon that question, during the official term of the present President. The question may be raised in the course of the ensuing session of Congress, and the charter may expire during the continuance in office, of the present incumbent of the Executive chair. At this moment however, it is not believed that any fact is officially known, which calls for the immediate action of the Executive, or which renders it probable, that the Legislature will be called to the consideration of the subject.

Whenever that subject shall be presented to the Legislative body, it will without doubt occasion a strong sensation. It will divide many, who on other great questions, and indeed generally, are in harmonious concert of opinion. It will bring into active opposition to the administration, the institution whose legal existence is questioned, and those who from various causes, are interested in its welfare, or controuled by its influence.

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I repeat the declaration. If the proposed communication were enjoined by duty, no considerations of this sort, could of course be permitted to interfere with its fulfilment. But since the question may not arise during the present official term of the Executive, and since if it does, ample time and opportunity will be afforded to communicate to Congress, the views of the Executive, it does not seem to me to be expedient, by anticipating the agitation of the subject, to command at this early day those exciting discussions, which unless they eventuate in the renewal of the charter, will without doubt be revived at each successive session, until some substitute institution exclusive in its character, shall be established.

The responsibilities of the administration must necessarily be great, and its indispensable duties during the approaching session of Congress, will be sufficiently arduous. As it advances in its official career, it will acquire by the judgment of a discerning people, on its zealous endeavors for the promotion of the public interests, an increase of strength, which will give increased effect to the first recommendations of the President, while a failure to obtain the support of Congress, to any measure which in this early stage he may recommend, may diminish its strength and capacity for advancing the great interests committed to its care.

Respectfully submitted by